

EXHIBIT K

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,

Plaintiff,

Criminal Action
No. 19-cr-10080-NMG

v.

February 27, 2020

DAVID SIDOO, et al.,

Defendants.

Pages 1 to 26

TRANSCRIPT OF STATUS CONFERENCE
BEFORE THE HONORABLE NATHANIEL M. GORTON
UNITED STATES DISTRICT COURT
JOHN J. MOAKLEY U.S. COURTHOUSE
ONE COURTHOUSE WAY
BOSTON, MASSACHUSETTS 02210

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Nathaniel M. Gorton, United States District Judge, United States District Court, District of Massachusetts, at the John J. Moakley United States Courthouse, One Courthouse Way, Boston, Massachusetts, on February 27, 2020.)

THE CLERK: All rise. Thank you. You may be seated. This is criminal action number 19-10080, United States of America versus David Sidoo, et al. Will counsel, please, identify themselves for the record.

MR. ROSEN: Good morning, Your Honor. Eric Rosen, Leslie Wright and Ms. Kearney for the government.

THE COURT: Mr. Rosen, Ms. Wright, Ms. Kearney.

MR. TRACH: Good morning, Your Honor. William Trach for defendants Mossimo Giannulli and Lori Loughlin.

THE COURT: Mr. Trach.

MS. MINER: Good morning, Your Honor. Tracy Miner on behalf of Homayoun Zadeh.

THE COURT: Ms. Miner.

MR. WEINBERG: Good morning, Your Honor. Martin Weinberg on behalf of Robert Zangrillo.

THE COURT: Mr. Weinberg.

MR. KENDALL: Good morning, Your Honor. Mike Kendall from White & Case on behalf of John Wilson.

1 THE COURT: Mr. Kendall.

2 MR. POPEO: Good morning, Your Honor. Robert Popeo
3 on behalf of Elisabeth Kimmel.

4 THE COURT: Mr. Popeo.

5 MR. CAHN: Good morning, Your Honor. Reuben Cahn
6 on behalf of Mr. Chen who is present.

7 THE COURT: Mr. Cahn.

8 MR. LOUCKS: Good morning, Your Honor. Michael
9 Loucks for Marci Palatella.

10 THE COURT: Mr. Loucks.

11 MR. SCHUMACHER: Good morning, Your Honor. David
12 Schumacher on behalf of Amy Colburn and Gregory Colburn. And
13 Patric Hooper is here as well.

14 THE COURT: Yes. Mr. Schumacher.

15 MR. PIROZZOLO: Good morning, Your Honor. Jack
16 Pirozzolo on behalf of William McGlashan. And with me is
17 Marshall Camp also on behalf of William McGlashan.

18 THE COURT: Mr. Pirozzolo.

19 MR. MEIER: Good morning, Your Honor. David Meier
20 on behalf of Diane Blake and Todd Blake.

21 THE COURT: Mr. Meier.

22 MR. VIEN: Good morning, Your Honor. George Vien
23 on behalf of Mossimo Giannulli.

24 THE COURT: Mr. Vien.

25 MR. KELLY: Good morning, Your Honor. Brian Kelly

1 on behalf of defendant Gamal Abdelaziz.

2 THE COURT: Mr. Kelly. Thank you. I would invite
3 those in the jury box who are attending to also introduce
4 themselves, please.

5 MR. FLASHNER: Good morning, Your Honor. Cory
6 Flashner also on behalf of Elisabeth Kimmel.

7 THE COURT: Mr. Flashner.

8 MR. CAMP: Good morning, Your Honor. Marshall Camp
9 on behalf of Bill McGlashan.

10 THE COURT: Mr. Camp.

11 MR. TOMBACK: Good morning, Your Honor. Andrew
12 Tomback of White & Case on behalf of Mr. Wilson.

13 THE COURT: Mr. Tomback.

14 MR. BEIRNE: Good morning, Your Honor. Eoin Beirne
15 also on behalf of Elisabeth Kimmel.

16 THE COURT: Mr. Beirne.

17 MS. THOMPSON: Good morning, Your Honor. Melinda
18 Thompson on behalf of Todd and Diane Blake.

19 THE COURT: Ms. Thompson.

20 MR. ROBINSON: Good morning, Your Honor. Mark
21 Robinson also on behalf of Elisabeth Kimmel.

22 THE COURT: Mr. Robinson.

23 MR. HOOPER: Good morning, Your Honor. Patric
24 Hooper also here on behalf of Greg and Amy Colburn.

25 THE COURT: Good morning, Mr. Hooper. We have

1 apparently Mr. Berkowitz on the phone as well.

2 MR. BERKOWITZ: Thank you, Your Honor. Sean
3 Berkowitz on behalf of Lori Loughlin and Mossimo Giannulli.
4 I appreciate you allowing me to participate by phone.

5 THE COURT: Good morning, Mr. Berkowitz. As we are
6 aware, the defendants Giannulli and Loughlin late yesterday
7 filed a supplemental memorandum regarding trial groups and a
8 motion to postpone setting a trial date. It was docket
9 number 875. They make very serious *Brady* violation
10 allegations and charges of prosecutorial misconduct in that
11 pleading.

12 The government of course has not had an opportunity
13 to respond to it. I am not going to postpone this hearing or
14 my addressing the need to set a schedule for the resolution
15 of this multi-defendant case. But I am now directing the
16 moving defendants and any other defendant who intends to join
17 them to file on or before Friday March 13 a joint motion to
18 dismiss, to suppress, and/or for sanctions and supporting
19 memoranda based upon the information just brought to the
20 Court's attention to which the government can file its
21 opposition and memorandum, if any, on or before Friday,
22 March 27.

23 I will take that matter under advisement separately
24 from the other matters and may schedule a hearing in early
25 April. It will not affect any other time deadlines set in

1 this case.

2 Now I am going to proceed with the original purpose
3 of this status conference, which is to discuss trial groups
4 and dates for trial if one is ultimately necessary. This
5 case, counsel, was indicted in March of last year. And I
6 recognize that there have been superseding indictments in
7 March, April, and October of 2019 and again last month. It
8 is also true that there has been production of voluminous
9 discovery in a rolling fashion. And there are 15 defendants
10 involved in this alleged conspiracy, the very existence of
11 which is contested.

12 I grant you all of that, but this case needs to be
13 resolved expeditiously either by trial or otherwise. And I
14 mean to make that happen by dealing with the dispositive
15 motions later this spring, and, if necessary, a trial of
16 about one half of the defendants in early October of this
17 year. It goes without the necessity of citation that the
18 prompt resolution of criminal cases is not only in the
19 interest of those charged with serious crimes, their counsel,
20 and prosecutors, but also the public at large and the
21 criminal justice system generally.

22 It is not only the right of the accused to a timely
23 inquiry into the charges against them but also a fundamental
24 duty of the charging authority and the Court to provide a
25 prompt trial. I am also fully aware that there are pending

1 discovery issues before Magistrate Judge Kelley and motions
2 pending to dismiss before me. But I assure you, that those
3 motions will be resolved with or without hearings before the
4 end of June this year.

5 With respect to the grouping of defendants, the
6 government has provided me with no logical reason to adopt
7 either of its proposals. And I agree with the defendants
8 generally that to the extent possible, the defendants with
9 like charges pending against them and the defendants with
10 familial relationships ought to be tried together to avoid
11 inefficiencies and the introduction of unrelated and possible
12 prejudicial evidence. That makes sense to me.

13 But I do agree with the government that this case,
14 or at least the first group of the defendants to be tried in
15 this case, ought to go forward in October of this year. I do
16 not want to try this case three times. So for the time being
17 I am going to divide the defendants into two groups. The
18 first group of eight defendants will be the defendants who
19 are charged with making corrupt donations to the University
20 of Southern California to gain admission for their children
21 through the so-called side door and who were not involved in
22 the alleged test cheating or with other universities.

23 Accordingly, group one to be tried in October will
24 be defendants Abdelaziz, the Blakes, Giannulli, Loughlin,
25 Wilson, Zadeh and Zangrillo. I expect the impanelment of the

1 jury in this case will not be easy and will take several
2 days. So we will begin impanelment on Monday, September 28,
3 and continue from day to day until the jury is picked. The
4 trial itself will begin on Monday, October 5, and will
5 proceed day to day thereafter.

6 I believe this trial can be completed in four
7 weeks. But if it is not, we will keep going, and it will be
8 completed well before Thanksgiving. As a safety valve, I am
9 going to schedule a status conference some time during the
10 summer, probably late in July, to revisit this schedule and,
11 if necessary, determine whether one or two defendants need to
12 be deferred until a subsequent trial. But all counsel for
13 the named defendants are to be prepared to try this case as
14 it is currently scheduled.

15 The second trial involving the remaining defendants
16 will begin in January, probably Monday, January 11, 2021, and
17 follow a similar course. Any motions to sever or oppose
18 these groups must be filed on or before April 1 in accordance
19 with Magistrate Judge Kelley's existing schedule for motions.

20 I am also going to amend the back end for the
21 filing of dispositive motions. Those motions will be due as
22 originally scheduled on April 1, but the government's
23 opposition memorandum will be due on April 30. And replies,
24 if any, by May 15. Hearing on those motions, if any, will be
25 in early June. Are there any questions, counsel?

1 Hearing none, we will proceed to some other matters
2 that I have in mind. Let's give them a date for the status
3 conference in late July, avoiding my MDL conflict.

4 THE CLERK: How about we could do Tuesday the 28th
5 at 3 p.m.?

6 THE COURT: Tuesday, July 28 at 3 p.m. there will
7 be a status conference here in this courtroom. Any problem
8 with that date for anybody? Okay. I also want to set a
9 final pretrial conference the week before we impanel. Again
10 I also have to avoid MDL conflict, but early that week.

11 THE CLERK: Tuesday, September 22 at 3 p.m.

12 THE COURT: Tuesday, September 22 at 3 p.m. Any
13 problem with that date? Okay. I am concerned about pretrial
14 publicity. Needless to say, this is a high profile case, but
15 it is not going to be tried in the newspapers or on the
16 Internet. And counsel are forewarned that if I become aware
17 that counsel for either the government or the defendants is
18 not exercising appropriate constraint in that regard, there
19 will be consequences.

20 And finally, let me say that I have heard from
21 Magistrate Judge Kelley who has informed me that her ruling
22 on production or other matters will be entered forthwith. Is
23 there anything else that needs to come to my attention at
24 this conference? Anything anybody wants to bring up?
25 Mr. Weinberg?

1 MR. WEINBERG: Just, Your Honor, in order for us to
2 have the trial in the fall as scheduled, we would ask the
3 Court to not follow the local rule on schedule which would
4 provide exhibit and witness lists just seven days before
5 trial. With eight defendants having their own universes of
6 discovery, there's over 3.2 million pages in all, it would
7 help all the parties for Your Honor to set an exhibit
8 production list --

9 THE COURT: Good point, Mr. Weinberg. Is there any
10 reason why we can't alter those dates as far as the
11 government is concerned?

12 MR. ROSEN: No, Your Honor. I think we should
13 probably confer with each other about applicable dates.

14 THE COURT: Why don't you do that, Mr. Weinberg,
15 with the government, and give me all of your proposed dates
16 to in limine motions, responses to in limine motions,
17 responses to witnesses and exhibits, the proposed voir dire
18 questions for the jury panel. All of those in my normal
19 sequence go three weeks, two weeks, and one week before
20 trial. In this case they can be five, four, and three.

21 MR. WEINBERG: Thank you, Judge.

22 THE COURT: I think your point is well taken. This
23 is too much material to wait until the last week.

24 MR. WEINBERG: Thank you, sir.

25 THE COURT: You're welcome. Anybody else?

1 Anything from the government?

2 MR. ROSEN: Now that we have a trial date, Judge, I
3 just want to inform the Court that we will be doing a very
4 early production of *Jencks* material in this case, getting
5 everything out. That will be forthwith provided.

6 THE COURT: That is appropriate. I am not going to
7 make this into a motion hearing, but I know this matter that
8 was filed late yesterday afternoon is very serious. I take
9 it the government is going to have some reasonable
10 explanation for the Court quickly.

11 MR. ROSEN: Absolutely, Judge. Just very briefly.
12 The dispositive issue is the fact that in the notes we
13 believe -- First of all, these were taken three or four days
14 after Rick Singer began cooperating with the government. He
15 obviously wasn't being very forthright. He was writing these
16 notes. These were directed to his lawyer. He sent these
17 notes to his lawyer. His lawyer afterwards claimed privilege
18 over these notes.

19 In the top portion of the note that was filed, the
20 note that's blacked out, that's Singer's plea colloquy.
21 That's why we carved this aside for a privilege review.
22 Because although we had downloaded his phone --
23 unfortunately, it's blacked out in the filing, but it says,
24 "Thoughts I need to start my plea with. Where it all
25 started."

1 At that point we hadn't charged anyone in this
2 case, and we were very concerned about inadvertently looking
3 at privileged material that he was sending to his lawyer. We
4 had a discussion with him later, and we stopped looking at
5 the notes because of that. All of these notes were sent to
6 his attorney. The issue in the note that's been flagged by
7 defendants is simply that the payments were going to the
8 program, not the coach, and he would say it was a donation.

9 Judge, that's our theory of the case that we've
10 been proceeding on for the entirety of this case. We have
11 disclosed that to the defendants on numerous, numerous
12 occasions. In footnote 17, the very first wiretap affidavit,
13 we say that. "Investigators analyzing Singer's bank records
14 have seen payments directly to university athletic programs
15 in addition to payments to individual coaches. I believe
16 that these payments to athletic programs are also payments in
17 furtherance of a fraudulent scheme even though universities
18 are receiving a portion of the money because I believe the
19 universities are unaware that the coaches and/or
20 administrators are recruiting those students in exchange for
21 the monetary payments."

22 We have disclosed this in charging documents. We
23 have written motion responses in this case stating that, "The
24 parents were told that the money was going to the program and
25 this was still a bribe because these were fake athletes being

1 recruited."

2 Page 21 of docket 736 we write, "Contrary to the
3 defendants' suggestion, the government has never contended
4 that Singer told the Giannullis that their money would be
5 directed to Heinel personally. Rather the Giannullis are
6 charged with conspiring to bribe Heinel to facilitate their
7 daughter's admission to USC as a fraudulent athletic recruit
8 in exchange to a contribution to a USC fund that benefited
9 Heinel in breach of her duty to honest services to USC."

10 We've disclosed all the evidence, numerous calls,
11 emails, Singer tells his clients that the money is going to
12 the program, and he characterizes this as a donation.

13 In our discovery responses, we have provided the
14 defendants with examples of these calls. We have written
15 letters to the defense explaining that Singer told the
16 Giannullis and others that the money was going mostly to the
17 program. I did that most recently at the end of January
18 2020. The first 50,000 went directly to USC program. And
19 Singer, to the extent he recalled it, he believed that the
20 Giannullis knew that part of the \$200,000 sent to KWF was
21 going to a USC program. They did not specifically discuss
22 the amount that would go to the USC program out of the
23 \$200,000.

24 *Brady* is a rule of fundamental fairness, not a
25 discovery rule. We cannot suppress what the defendants have

1 already been told because that's obviously within their
2 knowledge. We have told the defendants several times, and we
3 will continue to do so, that this case is a bribery case
4 about payments to a program that Singer characterized as a
5 donation. It was a quid pro quo. Pay the money. Their kids
6 would be recruited guaranteeing them effective admission for
7 a sport they either didn't play well or, in the Giannullis
8 case, they didn't play at all.

9 Judge, Doug Hodge, Michelle Janavs and Elizabeth
10 Henriquez pled guilty in this court to honest services fraud
11 on the fact that those payments went to the program, and that
12 they understood it was a bribe because they were corrupt
13 payments. Your Honor accepted those pleas. That was in
14 their plea colloquies, their PSR's, and their sentencing
15 memos that have been filed.

16 Doug Hodge even wrote an op-ed in the Wall Street
17 Journal saying this as well. Two have been sentenced based
18 on this. And in the most recent sentencing involving
19 Michelle Janavs where the parties agreed that the money was
20 going to be used by USC for their program, Your Honor
21 repeatedly referred to this as a bribery case because it is.
22 You pay the money. You get in as a fake athlete.

23 By the way, just because Singer said the money was
24 going to the program, doesn't mean that that's what the
25 parents took away from it.

1 Marci Palatella, a charged defendant, wrote in a
2 text message to her friend after paying money to the
3 "program", which by the way, was filtered through basically a
4 sham charity, "I don't think most of it went to the school,
5 between us only. Please never repeat anything." The notes
6 that we produced are consistent with the government's case
7 and cumulative of other evidence already provided to the
8 defendants.

9 And as Your Honor knows in repeatedly stating that
10 this is a bribery case on these very facts calling something
11 a donation or making it out to the program does not make it
12 legitimate and certainly does not make it a donation. USC or
13 any school does not have a legitimate admissions process for
14 fake rowers, fake football players, fake pole vaulters, or
15 fake anything whether you call it a donation, a payment, a
16 bribe, or simply nothing at all. And I direct the defendants
17 to Section 2569 of the --

18 THE COURT: All right. I think we've had enough of
19 your response.

20 MR. ROSEN: What I'm saying is that as soon as we
21 completed the tape review, we turned it over. Should we have
22 done that earlier? Absolutely. We've made a concerted
23 effort. We're going to produce *Jencks* as soon as possible.
24 We're going to produce all the iPhone images probably early
25 next week. We're going to get this done, and we're going to

1 get this tried. I do point out if this was so exonerating
2 for the defendants rather than cumulative, they'd want to try
3 this case. I want to try this case.

4 THE COURT: Thank you. I will give the defendants
5 an equal five minutes to respond. If each one wants to
6 speak, you understand five minutes total.

7 MR. TRACH: I understand. A few things, Your
8 Honor. First off, in the same way that saying that something
9 is a donation doesn't necessarily make it a donation if
10 there's other evidence that suggests it's a bribe, turning a
11 donation into a bribe doesn't make it a bribe either. And
12 that's what happened here. In fact, we know that the U.S.
13 Attorney himself in the press conference announcing this case
14 said this case is not about making donations to a school to
15 help your children get into the school. That happens. It's
16 perfectly lawful. The question comes behind whether this
17 was, in fact, a bribe.

18 And what we have here in this statement is Singer
19 himself, immediately upon cooperating, saying the government
20 wants me to say that these were bribes. What I told the
21 parents was that these were donations, not bribes. They want
22 me to lie. They're yelling at me to get me to say something
23 else, Your Honor.

24 And, yes, Your Honor has sentenced people. And in
25 those findings you have found based on the information that

1 the government gave you that what was paid was bribes. What
2 Your Honor didn't have was the fact that Singer himself
3 immediately upon cooperating was saying that, in fact, he
4 told the parents that these payments were legitimate and that
5 they were not, in fact, bribes. That is not information that
6 the Court had. That's not information that Judge Woodlock
7 had when he sentenced Mr. Bizzack. It's not information that
8 any the other judges had who sentenced people.

9 And if you look at what was said about those people
10 in those sentences hearings, Your Honor, it was not that this
11 was generally a bribe because it went to a USC payment, the
12 government stood up and said the payments that were made to
13 the Key Worldwide were made by those defendants with the
14 understandings that those bribes were going to be paid either
15 to the school or to the coaches. And that's not true. And
16 they knew it was not true because Singer said that, Your
17 Honor.

18 They did not share that with the Court. They did
19 not share that with defense counsel who pled guilty. They
20 did not share that before those people were sentenced, and
21 that is a problem. And it is a big problem, Your Honor,
22 because it is exonerating information.

23 The fact that somebody made the donation to USC
24 with the goal of getting their children into USC is not a
25 crime. Everybody admits that that's not a crime. And

1 calling it a bribe because you made the payments with the
2 expectation that you would get something in response doesn't
3 make it a bribe. And the fact of the matter is this whole
4 case keys in on what is it that the people who made these
5 donations believed that they were doing in paying money to
6 USC or paying money to the Key Worldwide Foundation. Were
7 they making legitimate donations that were obviously going to
8 help their kids get into school? Or were they instead
9 somehow lining somebody's pockets or giving somebody money in
10 exchange for that person corruptly giving them something that
11 they wouldn't get otherwise? That's the whole case.

12 And the fact is that this evidence demonstrates
13 that it was the former and not the latter. And that's not
14 anything like what's been produced to us in discovery today.
15 This is exactly what we've been asking for, and we have been
16 told it doesn't exist. And that is an enormous problem, Your
17 Honor. And what I would ask is that rather than having us
18 have to file our dispositive motion on this issue that is
19 before you, Your Honor, as instructed on the timeline, that
20 we be permitted to file before Judge Kelley who has this
21 *Brady* issue before her to be able to develop the necessary
22 record that we need to develop on this so we can file an
23 informed motion before Your Honor informed by all the facts,
24 not just what we've received belatedly.

25 MR. KELLY: Your Honor, one minute left on the

1 clock before AUSA Rosen responds. Putting aside whether or
2 not these notes are actually privileged and whether you
3 should go to the attorney rather than the cooperating witness
4 to waive the privilege, put that aside. The note itself
5 talks about a "loud and abrasive call". We haven't seen that
6 call. They haven't disclosed that call to us.

7 They have over 50 hours of supposed nonpertinent
8 calls. They were probably sitting on that. And that's pure
9 *Brady* if the agent is telling this cooperating witness to lie
10 about our clients. If that call exists, we would like it.

11 THE COURT: Wait a minute, counsel. The Magistrate
12 Judge is going to handle those discovery issues. This court
13 is going to handle the motion itself under the schedule that
14 I have directed earlier today.

15 MR. KELLY: Thank you.

16 THE COURT: Briefly.

17 MR. ROSEN: There is nothing in these notes that
18 suggest what they were doing is legitimate. Absolutely
19 nothing. And the fact is that they blacked out a lot of the
20 portions of the notes where Rick is writing that it wasn't
21 legitimate. "Spoke to Augustin." That's Huneus. He's pled
22 guilty. "He wanted to know I was backing Augustin as hard as
23 anything. I have confirmed I spoke to Donna Heinel, and
24 Augustin will be admitted by the second week of November.
25 Spoke about the fake photo I put on the profile." That's not

1 legitimate. A legitimate donation is when you don't get
2 anything for that donation.

3 THE COURT: All right. I expect that I will see
4 that in writing later this month. Is there anything else
5 that needs to -- let me talk to my Deputy a minute.

6 My Deputy brings up a good point. Is there a
7 necessity for a motion to exclude time?

8 MR. WEINBERG: We certainly agree this is a complex
9 case. There are motions pending that would provide a second
10 basis for a speedy trial exception, and there will be motions
11 throughout the next few months. The defendants all assent
12 to --

13 THE COURT: Let that not be avoided, counsel. It
14 needs to be resolved. Anything else?

15 MR. KENDALL: Your Honor, I want to take ten
16 seconds. I know we're imposing on your patience. Mr. Rosen
17 made directly incorrect statements that are related to my
18 client. Those documents that he's talking about show that my
19 client's son was they were told he was a great athlete. He
20 was a member of the U.S. Junior Olympic Development Team. He
21 was recruited. He came and he played on the USC team and was
22 a water polo player at USC. For them to claim that
23 everybody's a false athlete and that's what those documents
24 show, it's just not an accurate picture for the record.
25 Thank you, Your Honor.

1 MR. WEINBERG: If I could burden the Court for ten
2 more seconds. This evidence will also reflect that USC is
3 not a victim of wire or mail fraud. They as an institution
4 that sought these donations and received them and welcomed
5 them.

6 THE COURT: Thank you, counsel. We are adjourned.

7 THE CLERK: All rise.

8 (Court recessed at 12:44 p.m.)
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CERTIFICATION

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Joan M. Daly

February 28, 2020

Joan M. Daly, RMR, CRR
Official Court Reporter

Date